

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:

CLAYTON D. CALDWELL and  
DONNA L. CALDWELL,

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Debtors.

DONNA L. CALDWELL,

Plaintiff,

vs.

MCPHILL'S OF LANCASTER, INC., dba  
MCPHILL'S FURNITURE STORE, MCPHILL'S  
OF MARYSVILLE, INC.; MCPHILL'S  
FURNITURE STORE, MCPHILL'S OF  
GLENDALES, INC.; MCPHILL'S FURNITURE  
STORE,

Defendant.

Bankruptcy Case  
No. 05-66074-fra13

Adversary Proceeding  
No. 06-6270

Memorandum Opinion

This matter came before the Court for hearing on November 21, 2006. Plaintiff Donna Lynn Caldwell appeared personally, and through her attorney, Keith D. Karnes, of Olsen, Olsen & Daines, LLC. Defendants were previously found to be in default; they received notice of this hearing, but did not appear.

1           The Court heard testimony of Plaintiff and her witnesses,  
2 received into evidence a transcript of proceedings before the Circuit  
3 Court of the State of Oregon for Douglas County, and held that it would  
4 take judicial notice of its own record in the Plaintiff/Debtor's  
5 underlying Chapter 13 bankruptcy case. The Court concludes that a money  
6 judgment should be entered in favor of Plaintiff and against Defendants,  
7 and each of them, for \$50,000 compensatory damages, plus Plaintiff's  
8 costs and reasonable attorney's fees incurred in connection with this  
9 adversary proceeding.

10                           I.   PROCEDURAL BACKGROUND

11           Plaintiff, together with her husband, filed a petition for  
12 relief under Chapter 13 of the Bankruptcy Code on July 25, 2005. The  
13 plan of reorganization was confirmed by order entered on January 5, 2006  
14 (Docket No. 37).

15           Plaintiff's complaint was filed on August 4, 2006, seeking  
16 damages for violation of the automatic stay. The complaint, together  
17 with summons issued by the Court, was served on each of the captioned  
18 Defendants in care of Ron Anderson, Registered Agent, 104 East First  
19 Street, Albany, OR. No appearance was filed by or on behalf of any of  
20 the Defendants and an order finding each of them to be in default was  
21 entered on October 13, 2006. At the Court's direction, a hearing to  
22 consider the measure of damages and entry of judgment was scheduled for  
23 and held on November 21, 2006. Notice of the hearing was served on each  
24 of the Defendants in care of their registered agent, and at 2237 Colby  
25 Avenue, Los Angeles, CA. As noted, Defendants did not appear at the  
26 hearing.

1 II. FACTUAL BACKGROUND

2 On June 3, 2003, McMahan's Furniture, which gave its address as  
3 2455 West Harvard Boulevard, Roseburg, OR, initiated a small claims  
4 proceeding against Plaintiff, naming "Clayten [sic] Caldwell",  
5 Plaintiff's husband and co-debtor, as surety. The Circuit Court's record  
6 indicates that, after service was made, Donna Caldwell failed to appear  
7 and a small claims judgment was entered on July 17, 2003.

8 On September 2, Plaintiff initiated proceedings to obtain a  
9 debtor's examination.<sup>1</sup> The debtor's examination was scheduled for  
10 October 7. A return of service is on file with the Circuit Court  
11 indicating that notice was served on Donna Caldwell on September 14. Ms.  
12 Caldwell failed to appear at the October 7 hearing. An order to show  
13 cause was issued requiring her to appear on December 2. Notice of this  
14 hearing was also served, and Ms. Caldwell again failed to appear. A  
15 second show cause hearing was scheduled for December 14, with the same  
16 result.

17 A motion and supporting affidavit seeking an arrest warrant  
18 were filed on January 3, 2005. The contents are not part of this Court's  
19 record. In any event, the order for the arrest warrant was entered by  
20 the Circuit Court on January 5, and the warrant was duly issued.

21 Nothing happened for several months after that. As noted, the  
22 Caldwell filed their petition for relief under the Bankruptcy Code on  
23 July 25, 2005. Schedules were filed on August 13 which included, in

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24  
25 <sup>1</sup>Under ORS 18.265, a judgment creditor may obtain an order upon  
26 motion requiring the debtor to appear before the court or a referee to  
answer questions under oath concerning any property or interest in  
property that a judgment debtor may have or claim.

1 Schedule F, McMahan's Furniture, at 2700 Stewark Parkway, Roseburg, OR.  
2 The return of service of the notice to creditors in the case shows  
3 service on McMahan's at 2455 West Harvard Avenue on July 26, 2005.  
4 Finally, McMahan's filed a proof of claim on October 3, 2005.

5 On December 3, 2005, police officers made contact with Ms.  
6 Caldwell at her home in connection with an incident related to a family  
7 member. However, after obtaining identifying information from Ms.  
8 Caldwell, the police officers learned of the outstanding arrest warrant.  
9 As they were required to do, they placed her under arrest pursuant to the  
10 warrant. She was handcuffed in the presence of her husband and children,  
11 and transported to the Douglas County Jail. She remained there in a  
12 holding cell under Mr. Caldwell posted bail approximately 2½ - 3 hours  
13 later.

14 According the Ms. Caldwell's testimony and that of her family  
15 members, the arrest had a profound effect. For many years prior to the  
16 incident she had been suffering from various psychological difficulties  
17 which the family characterized as "panic attacks." After lengthy  
18 treatment, including psychiatric treatment, the problem had subsided,  
19 until the arrest incident. Thereafter, she reports that she has had  
20 considerable psychological difficulty, including frequent panic attacks,<sup>2</sup>  
21 an inability to travel more than short distances, an inability to remain  
22 home by herself, and claustrophobia.

### 23 III. ANALYSIS

24 Filing a petition for relief under the Bankruptcy Code operates  
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26 <sup>2</sup>Two to three times a week according to her son.

1 to stay the commencement or continuation of any action or proceeding  
2 against a debtor to recover a claim that arose prior to the commencement  
3 of the case. 11 U.S.C. § 362(a)(1). The stay is in effect as to the  
4 debtor herself until the case is closed or an order discharging claims is  
5 entered. In this case, the automatic stay remained in effect from the  
6 date the petition was filed through and including December 3, 2005.

7 An individual injured by a willful violation of the automatic  
8 stay "shall" recover her actual damages, including costs and attorney's  
9 fees, and, "in appropriate circumstances" may recover punitive damages.  
10 11 U.S.C. § 362(k)(1).

11 A violation of the automatic stay is "willful" if the violating  
12 party knows of the automatic stay and its actions in violation of the  
13 stay were intentional, regardless of whether the violator specifically  
14 intended to violate the stay. Eskanos & Adler, PC v. Leetin, 309 F.3d  
15 1210, 1215 (9th Cir. 2002); Pinkstaff v. United States (In re Pinkstaff),  
16 974 F.2d 113, 115 (9th Cir. 1992); Jove Eng'g v. I.R.S., 92 F.3d 1539,  
17 1555 (11th Cir. 1996). It is clearly established by this record that  
18 Defendants knew of Plaintiff's bankruptcy filing, and thus the automatic  
19 stay, at least as of the time the proof of claim was filed.

20 In Eskanos, the creditor caused its attorneys to file a  
21 collection action against the debtor after she had filed a petition for  
22 relief. Thereafter, the creditor failed to dismiss the state court  
23 proceeding promptly after receiving notice of the bankruptcy. The Court  
24 of Appeals held that a creditor has an affirmative duty under Code  
25 § 362(a)(2) to discontinue post-petition collection actions against a  
26 debtor pending in non-bankruptcy courts.

1           In In re Atkins, 178 B.R. 988 (Bankr. D. Mn. 1994), the  
2 creditor was found to have wilfully violated the automatic stay in a case  
3 where the debtor was arrested on the strength of a bench warrant issued  
4 in pre-bankruptcy proceedings. The Bankruptcy Court held that the  
5 creditor's failure to ensure that the warrant was recalled once the  
6 creditor had notice of the bankruptcy constituted a violation of the  
7 automatic stay.

8           It is well understood by those familiar with day-to-day legal  
9 process that the issuance of a bench warrant does not result in  
10 unleashing a posse to track down and arrest the defendant. Instead, as  
11 occurred here, the issuance of the bench warrant amounts to a legal  
12 landmine which the creditor assumes the debtor will trip over sooner or  
13 later. Obtaining an arrest warrant and leaving it in place constitutes  
14 continuing judicial process intended to collect a claim. It is precisely  
15 this activity which the automatic stay commands be discontinued. The  
16 creditor cannot defend its actions by arguing that the positive steps it  
17 took occurred pre-petition. Once the creditor becomes aware of the  
18 existence of the bankruptcy, it has an affirmative duty to ensure that  
19 the arrest warrant is recalled. The Defendants' failure to do so in this  
20 case constitutes a willful violation of the automatic stay.

#### 21                           IV. DAMAGES

22           Plaintiff and her family provide a harrowing description of the  
23 adverse effect on them of her arrest and detention. That she may be  
24 unusually susceptible to injury on account of these circumstances is  
25 immaterial. To be entitled to an award of damages under § 362(h), the  
26 Plaintiff must establish that she "(1) suffer[ed] significant harm, (2)

1 clearly establish the significant harm, and (3) demonstrate a causal  
2 connection between that significant harm and the violation of the  
3 automatic stay. . . ." Dawson v. Washington Mutual Bank (In re Dawson),  
4 390 F.3d 1139, 1149 (9th Cir. 2004), cert. denied 126 S.Ct. 397 (2005).  
5 That Plaintiff has clearly done. Given the cost of continued psychiatric  
6 treatment (which, admittedly, was undocumented at the hearing) and the  
7 emotional damages inflicted upon her, the Court finds that the \$50,000 in  
8 actual damages prayed for has been adequately established.

9 Plaintiff seeks \$100,000 in punitive damages. This amount is  
10 clearly excessive given the circumstances of this case. There is nothing  
11 in the record to suggest that Defendant intended to cause the damage  
12 actually sustained by the Plaintiff. It is at least as likely, judging  
13 from this record, that the Plaintiff simply overlooked its duty to have  
14 the warrant recalled. Absent specific evidence of malice or scienter on  
15 the part of the Defendants, the Court is not prepared to assess punitive  
16 damages.

17 Attorney for Plaintiff should submit a form of judgment in  
18 conformity with this memorandum opinion, along with a bill of costs and  
19 reasonable attorney fees incurred.

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22 FRANK R. ALLEY, III  
23 Bankruptcy Judge  
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